

Appl. No. 09/997,205
Amdt. dated Jun 16, 2004
Reply to Office Action of Dec 16, 2003

REMARKS

Status

Claims 1-16 are pending, of which claims 12-15 have previously been withdrawn. The Examiner has rejected claims 1-4 and has allowed claims 5-11 and 16.

Claim Amendments

Applicants have amended claims 1-4 to correct typographical errors, e.g. claim 2 depending from claim 2. Applicants believe that the errors were apparent to one of ordinary skill in the art and that the correct interpretation would have been apparent. Accordingly, no new matter has been introduced under 35 U.S.C. §132 by way of these amendments.

Rejections under 35 U.S.C. §102

The Examiner has rejected claim 1 under 35 U.S.C. §102(b) as being anticipated by Moles (U.S. Patent No. 5,932,799). Applicants respectfully traverse this rejection for the following reasons.

Moles cannot anticipate the claimed invention because Moles does not disclose each and every element of the claimed invention. Moles does not disclose an elastomer layer having recess and a membrane formed therein as is claimed. Instead, Moles discloses a membrane layer sandwiched between polymer layers having recesses (see figures 1A and 1B), and the membrane layer does not have a recess formed therein. It is well settled that for a reference to anticipate, it must disclose each and every element of the claimed invention, which Moles does not. Accordingly, Applicants respectfully request withdrawal of this rejection.

Rejections under 35 U.S.C. §103

The Examiner has rejected claims 2-4 as being unpatentable under 35 U.S.C. 103(a) over Moles. Applicants respectfully traverse this rejection for the following reasons.

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As discussed above, Moles does not disclose each and every element of the claimed invention because Moles does not disclose an elastomer layer having recess and a membrane formed therein as is claimed. It is well settled that if a reference, or combination of references does not teach or disclose each and every element of the claimed invention, it cannot be said that the invention is obvious in view of the reference or combination of references under 35 U.S.C. §103. The Examiner's employment of design choice from "one of ordinary skill in the art" does not cure the defects of Moles as an anticipatory reference under 35 U.S.C. 102, as discussed above, therefore Moles cannot render the claimed invention obvious. Accordingly, Applicants respectfully request withdrawal of this rejection.

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CONCLUSION

Applicants believe the pending claims are now in condition for allowance for the foregoing reasons. Accordingly, Applicants respectfully request a Notice of Allowance. If, in the Examiner's opinion, a telephone conference may be helpful, Applicants' counsel may be contacted at the number below.

Respectfully submitted
under 37 C.F.R. 1.34(a),



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